

Message Text

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TAGS: ECON, RP

SUBJECT: LAND OWNERSHIP -- GUIDELINES FOR THE DONATION SCHEME

REF: MANILA 3218

1. REPRESENTATIVES OF FOUR U.S. FIRMS MET MAY 2 WITH INDUSTRY SECRETARY PATERNO FOR A CRITIQUE OF THEIR PROPOSED DONATION PLANS TO SOLVE THE LAND OWNERSHIP PROBLEM. THE AGREED MINUTES OF THIS MEETING HAVE BEEN DISTRIBUTED TO ALL KNOWN AMERICAN LANDOWNER FIRMS BY THE AMERICAN CHAMBER AND ARE PROVIDED BELOW FOR THE DEPARTMENT'S INFORMATION. THE APPROVED SCHEME PROVIDES IN EFFECT THAT (A) U.S. FIRM WILL DONATE ITS LAND TO A GOP-APPROVED CHARITABLE ENTITY; (B) THE DONATION WILL BE VALUED AT FAIR MARKET; (C) DONOR WILL LEASE BACK LAND AT AN EFFECTIVE RENTAL (INCLUDING TAXES) OF 5 PERCENT YEARLY; (D) DONOR WILL PAY REAL ESTATE TAXES OF 2.5 PERCENT AS PART OF EFFECTIVE RENTAL; (E) DONOR CAN SPREAD TAX DEDUCTION OVER A FOUR-YEAR SPAN; AND (F) ANY GOOD FAITH DONATION PLAN SUBMITTED BEFORE MAY 27, 1975 NEED NOT BE CONCERNED ABOUT THAT DEADLINE AND PERIOD IN WHICH FINAL DETAILS MAY BE WORKED OUT IS LEFT UNSPECIFIED. TEXT OF MINUTES AS FOLLOWS: QUOTE
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A. LEASEBACK ANNUAL RENTAL RATES

1. THE DONOR MUST BEAR THE COST OF THE REAL ESTATE TAXES FOR WHICH THE DONEE WILL BE LIABLE. SUCH AMOUNTS (FOR R/E TAXES) MUST BE CONSIDERED AS BEING ADDITIONAL TO THE RENTAL PERCENTAGES NOTED BELOW. SECRETARY PATERNO DID SAY THAT, WITH THE AGREEMENT OF THE DONEE, THE DONOR COULD ADD AN AMOUNT TO ITS ANNUAL RENTAL PAYMENT AND MAKE THIS INCREMENT, FOR R/E TAXES PAYMENT BY THE DONEE, AN INTEGRAL PART OF THE TOTAL RENTAL PAYMENT SPECIFIED IN THE LEASEBACK OF THE LAND.

2. THE AMOUNT OF THE DONATION WILL BE THE FAIR MARKET VALUE, AS EVIDENCED BY THE AMOUNT ESTABLISHED IN 1974 AS A BASIS FOR REAL ESTATE TAX PAYMENT. IN OTHER WORDS, A LAND PARCEL WAS APPRAISED AS BEING WORTH P 1 MILLION AT FMV. THE VALUATION FOR R/E TAXES WAS THEN SET AT P500,000 AND THE TAX RATE APPLIED TO THAT FIGURE. THE DONATION AMOUNT WILL BE ACCEPTABLE AT P1 MILLION.

3. SECRETARY PATERNO THEN STATED THAT GOVERNMENT WOULD EXPECT THAT ANNUAL RENTAL PAYMENTS WOULD BE MORE THAN ONE AND ONE-HALF PERCENT (1-1/2 PERCENT) DURING THE FIRST TWENTY-FIVE YEAR PERIOD. FURTHER, THAT IT WAS EXPECTED THAT ANNUAL RENTALS DURING THE TOTAL FIFTY YEARS (TWO PERIODS OF TWENTY-FIVE YEARS) WOULD BE AT LEAST TWO AND ONE-HALF PERCENT (2-1/2 PERCENT) OF THE DONATED VALUE.

4. IT IS PREFERABLE, AND EXPECTED, THAT THE 25-YEAR PERIODS WILL BE SUB-DIVIDED INTO SHORTER TIME INCREMENTS (SAY, FIVE FIVE-YEAR PERIODS DURING EACH 25-YEAR SPAN) AND THAT SOME INCREASE IN RENTAL PAYMENTS WILL BE INCLUDED IN ESTABLISHING THE ACTUAL RENTAL PAYMENTS DURING THESE SUCCESSIVE SHORTER TIME INCREMENTS.

5. IT IS EXPECTED THAT, ALTHOUGH PERCENTAGE RENTAL FIGURES MAY BE ESTABLISHED FOR THE SECOND 25-YEAR PERIOD, A REVALUATION OF THE LAND SHOULD BE MADE PRIOR TO THE RENEWAL DATE OF THE FIRST 25-YEAR PERIOD, AND ANNUAL RENTALS THEN PAID AGAINST ANY RESULTANT HIGHER EVALUATION OF THE LAND. SUCH REVALUATION MAY BE LIMITED BY AGREEMENT OF THE LIMITED OFFICIAL USE

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PARTIES, AND THE GOVERNMENT WOULD BE AGREEABLE TO A LIMITATION OF 25 PERCENT ABOVE THE ORIGINAL VALUATION.

B. DEDUCTION OF DONATION AS BUSINESS EXPENSE FOR INCOME TAX
THIS HAS BEEN A MOST DIFFICULT ONE FOR RESOLUTION
BUT THE DEPARTMENT OF FINANCE NOW HAS EXPRESSED WILLINGNESS
TO QUOTE SPREAD UNQUOTE THE DEDUCTIBLE EXPENSE OVER A PERIOD
OF NOT MORE THAN FOUR (4) YEARS (INCLUDING THE YEAR OF DONATION).

1. THE DONOR MUST CLEARLY STATE THE PERIOD OVER WHICH THE EXPENSE DEDUCTIONS WILL BE TAKEN IN EQUAL INCREMENTS. THIS IS TO BE SHOWN AT THE TIME OF PRESENTATION OF THE DONATION PROPOSAL AND IS IRREVOCABLE.

C. QUALIFIED CHARITABLE ORGANIZATIONS

1. THE ORGANIZATION SHOULD EITHER BE REGISTERED WITH NSDB OR BE EXEMPTED FROM DONOR'S TAX BY OTHER LAWS, AND BE NATIONAL IN THE SCOPE OF ITS ACTIVITIES AND WIDELY RECOGNIZED AS A CHARITABLE ORGANIZATION. TYPICAL OF SUCH FOUNDATIONS ARE: RED CROSS, COMMUNITY CHESTS, HEART FOUNDATION, BOY SCOUTS, ETC.

2. DONATION TO A QUOTE FAMILY UNQUOTE FOUNDATION, A FOUNDATION OF VERY LIMITED SCOPE, OR ONE CREATED SPECIFICALLY FOR THE PURPOSE OF RECEIVING THE DONATION(S) OF LANDS WOULD NOT BE ACCEPTABLE.

3. DONORS DESIRING TO DONATE TO BONA FIDE FOUNDATIONS OF LOCALIZED ACTIVITIES MAY SO DESIGNATE IN THEIR PROPOSALS AND SUCH PROPOSALS WILL BE CONSIDERED BY GOVERNMENT ON A CASE-TO-CASE BASIS.

D. IT WAS CONFIRMED THAT THE APPROVED DONATIONS WILL BE FREE FROM DONOR'S TAX.

E. SECRETARY PATERNO STATED THAT THOSE AMERICAN ENTITIES WHO SUBMIT GOOD-FAITH DONATION PROPOSALS BEFORE MAY 27, 1975, WILL NOT NEED TO FEEL CONCERN ABOUT THAT DEADLINE DATE BUT WILL BE COVERED QUOTE SINE DIE UNQUOTE UNTIL THE PROPOSAL IS ACTUALLY APPROVED.

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F. IN RESPONSE TO A SPECIFIC QUERY, SECRETARY PATERNO EXPRESSED AGREEMENT THAT ONLY LAND TITLE(S) ARE CONSIDERED FOR CONVEYANCE TO THE DONEE(S). OWNERSHIP OF ALL IMPROVEMENTS ON THE LAND(S) REMAINS WITH THE DONOR(S), EVEN AFTER CONCLUSION OF THE SECOND TWENTY-FIVE YEAR LEASE PERIOD (FIFTY YEARS), SUBJECT ONLY TO ACCEPTANCE OF THIS CONCEPT BY THE DONEE(S) AND, OF COURSE, WITHOUT CONFLICT TO EXISTING, PERTINENT LAW. UNQUOTE

2. COMMENT: AGREEMENT BETWEEN THE AFFECTED LANDOWNERS AND GOP ON THIS SET OF GUIDELINES REMOVES THE MAJOR STUMBLING BLOCK TO RAPID SETTLEMENT OF MOST LAND OWNERSHIP PROBLEMS. THESE GUIDELINES ARE CONSIDERED SO ATTRACTIVE BY A NUMBER OF FIRMS THAT ALTERNATE SCHEMES ARE BEING ABANDONED AT

THE LAST MINUTE IN FAVOR OF A DONATION. AS A RESULT, IT
IS EXPECTED THAT WELL OVER HALF THE REMAINING PROBLEMS WILL
BE HANDLED BY DONATION AND LEASEBACK.

3. EMBASSY WILL KEEP DEPARTMENT INFORMED OF OTHER PRO-
PROSALS AS THEY EMERGE FROM GOP/COMPANY DISCUSSIONS.

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